

# Exhibit E

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 BILL WISSER,

5 Plaintiff,

6 - against -

7 VOX MEDIA, INC.,

8 Defendant.

9 -----X

10 1251 Avenue of the Americas  
11 New York, New York

12 August 15, 2019  
10:00 a.m.

13  
14 (Confidential portions included)

15  
16 Deposition of Plaintiff, WILLIAM WISSER,  
17 before Rita Persichetty, a Notary Public of the  
18 State of New York.

1 you receive the PNG files that I sent, you  
2 would -- that is their native format. That's,  
3 perhaps the word. And you should see them in  
4 the native format, not as a printout. I  
5 didn't --

6 In other words, unless you received a  
7 physical copy -- unless you received a physical  
8 copy, you did not -- if you received a physical  
9 copy like this printout, that's not the same  
10 thing as the original file.

11 The original file can only be viewed  
12 on a computer. It can't be, it can't be --  
13 this is a reproduction, it doesn't include  
14 all -- enough data to see it big.

15 Q I agree.

16 A So the printout is I think at fault.  
17 I suspect that you did probably get the PNG  
18 file and just have made a printout, which is  
19 sort of a note, like summary in a sense, of  
20 what this is but you really need to view it on  
21 a computer screen to see it all.

22 MS. STROM: If you'd like to resend  
23 the files in a format that we can open  
24 them individually and see them in a way  
25 that your client would like us to do so,

1 please produce those to us immediately.

2 MR. FREEMAN: I would just state that  
3 we did produce the PNG files exactly as  
4 the plaintiff provided them to us, so, you  
5 know, in this E-mail had you just, you  
6 know, right clicked at the bottom  
7 right-hand corner, you could have  
8 downloaded the PNG to your desktop and  
9 seen it.

10 I don't know how that changes --

11 MS. STROM: I assure you --

12 MR. FREEMAN: -- the fact that it's  
13 going to be ultimately printed to paper,  
14 so I don't know how that's going to impact  
15 your line of questioning, but I guess we  
16 just proceed.

17 MS. STROM: I assure you that by the  
18 way it was sent over, there is nothing  
19 that you can right click on that would let  
20 you open the files individually. It was  
21 all sent as an image file.

22 But we can move on.

23 BY MS. STROM:

24 Q Mr. Wisser, you can see at the top of  
25 Exhibit 3 that this was sent yesterday at 12:59

1 p.m. Why -- when did you send this to your  
2 counsel, these files to your counsel?

3 A I guess two days ago.

4 Q Why were these images only sent two  
5 days ago to your counsel?

6 A I think you requested them two days  
7 ago.

8 Q Who requested them two days ago?

9 MR. FREEMAN: We're going to object  
10 to attorney/client privilege. You're  
11 asking about the content of  
12 communications.

13 MS. STROM: No, I'm not asking about  
14 the content of the communication, I'm  
15 asking who -- on a privilege log, which  
16 you've never given us in this case,  
17 obviously you have to give the name of the  
18 person making the communication and who  
19 it's received to, correct?

20 MR. FREEMAN: Yes.

21 MS. STROM: And that is what I'm  
22 asking for, correct?

23 MR. FREEMAN: Okay.

24 Q Who told you look for them two days  
25 ago?

1 A James.

2 Q Okay. Before two days ago, were you  
3 ever asked to look for all documents related to  
4 the photograph at issue in this lawsuit?

5 A Yeah, I didn't consider these  
6 documents -- these are files, picture files,  
7 these are not written documents.

8 Q So until two days ago, it was not  
9 your understanding that all electronic files  
10 would be considered documents for this lawsuit?

11 A I guess that's right. I didn't think  
12 that Photoshop or Lightroom files were  
13 requested. They asked me for any, you know,  
14 correspondence, written type materials and it  
15 seems that as -- it seems that only two days  
16 ago James called me up and asked me if I can  
17 like produce any Lightroom or Photoshop type  
18 files and I said sure, and I looked them up and  
19 found them and presented them.

20 Q Okay. Absolutely, I don't think  
21 that's on you, that you did not understand that  
22 in a lawsuit all electronic files are  
23 considered documents.

24 Have you now looked for all  
25 electronic files related to the photograph at

1 issue in this lawsuit?

2 A Yes.

3 Q And have you sent all of those to  
4 your counsel?

5 A Yeah, well. I mean, well, you can  
6 see here and in the second picture in this  
7 printout, that these are all, these are  
8 these -- these include some other pictures of  
9 dishes at the restaurant and they include some  
10 pictures of the chef and one of the owners and  
11 some of the staff, so that's there but there  
12 may be other pictures.

13 No, I don't think there are any other  
14 pictures related to that, to that particular  
15 dish. But I think I shot something, like, in  
16 the range of 280 pictures that day. So there  
17 are other pictures of the restaurant but not of  
18 that particular dish that is in the photograph  
19 in question.

20 These are all the photographs I made  
21 of that particular dish that I retained and  
22 that are still in my files.

23 Q Mr. Wisser, what do you do for a  
24 living?

25 A I'm a professional photographer and

1 an author.

2 Q Sorry, how long have you been a  
3 professional photographer?

4 A I started out in 1974 as a, I got a  
5 job as a cub reporter on a small town, small  
6 town daily in the Hudson Valley called the  
7 Peekskill Evening Star. And I was hired as a  
8 reporter, writer. But with my first paycheck,  
9 I went out and I bought a camera, an Olympus  
10 OM-1 camera, and I started taking pictures to  
11 illustrate my stories and I've done that ever  
12 since.

13 Q My husband used to be in advertising  
14 and used his paycheck to buy his first camera  
15 too, so it is a similar story. But not that  
16 camera, it was a Nikon something.

17 A Right.

18 Q With an S L R, I don't know.

19 Do you have any training to be a  
20 photographer, did you -- do you have any  
21 training in photography?

22 A I'm self-taught. And I was taught by  
23 other photographers at the newspapers I worked  
24 at. For example, John Mcelroy (phonetic) who  
25 is the photographer of the Peekskill Evening



1 a document that was produced by  
2 plaintiff's counsel but not production  
3 numbered. It is three pages long and at  
4 the top says, "Gmail forwarding photos of  
5 Ariete/four."

6 (Defendant's Exhibit 11, E-mails,  
7 marked for identification.)

8 Q Mr. Wisser, have you ever seen this  
9 document before?

10 A Well, I've seen this separate, this  
11 appears to have two separate E-mails in them  
12 and I've seen them both before but not exactly  
13 in this form.

14 Q So let's take it one at a time. At  
15 the very, very top it says, "Bill Wisser  
16 Bill@BillWisserphoto.com to Richard Liebowitz  
17 RL@Liebowitzlawfirm.com."

18 A Right.

19 Q Is that an E-mail that you sent to  
20 Richard Liebowitz?

21 A Exactly.

22 Q You said before Richard Liebowitz is  
23 one of your attorneys on this?

24 A Correct.

25 Q You sent, it was sent Friday July 19,

1 2019; is that correct?

2 A Yes.

3 Q And is that when you sent this E-mail  
4 exchange to Mr. Liebowitz?

5 A Yes.

6 Q Had you previously been asked to  
7 search for communications relevant for this  
8 lawsuit before July 19, 2019?

9 A Yeah, Richard asked me to find any  
10 documents I could, you know, around the whole  
11 matter of the Ariete picture. And this is,  
12 this document that you've handed me now  
13 contains some of the -- of that. But there  
14 actually, there is more correspondence in that  
15 chain and I sent it all to Richard and you  
16 probably have it.

17 Q Had you been asked before July 19,  
18 2019 to search for those documents?

19 A I assume that. I don't recall if he  
20 asked me on July 19 or July 18 or July 12 but  
21 some time on or about that time period he asked  
22 me to find whatever I could, any correspondence  
23 dealing with the Ariete shoot and I did. I  
24 can't tell you exactly what day it was that he  
25 asked me to produce this stuff but I'm sure it

1 was -- just, I'm a pretty prompt person and I'm  
2 sure I delivered this stuff, you know, within a  
3 day or two.

4 Q Were you aware that there was an  
5 order in this lawsuit ordering all documents to  
6 be exchanged by ordering the first set of  
7 documents to be exchanged on June 23?

8 A No, I'm not aware of that.

9 Q Okay. So below that it looks like  
10 there's two E-mails that I think you were  
11 referring to before?

12 A That's correct.

13 Q The second E-mail starts on the  
14 second page; is that correct?

15 A Well, calling it the second is maybe  
16 a bit confusing because it, chronologically it  
17 predates the first one.

18 Q You're absolutely correct, I  
19 apologize. So the earlier E-mail is on the  
20 second page, correct?

21 A Yes. And this is an incomplete  
22 rendering of the entire sequence. These are  
23 two E-mails but I sent Richard more and I think  
24 there was some problems in receiving it. I  
25 sent it many times but I can reconstruct for

1 you what the entire conversation was that  
2 involved not only me and Jason Odio, who is one  
3 of the co-owners of the restaurant. But the  
4 restaurant critic --

5 Do you have that document there?

6 MS. STROM: No. I call for its  
7 production.

8 A I mean, it was definitely sent to  
9 these guys and I think that they were having  
10 some problems. Sometimes when you have to copy  
11 an E-mail it doesn't include the full -- how  
12 shall I put this? Sometimes when you send an  
13 E-mail you don't get the full, they weren't  
14 able to separate these things. I had sent them  
15 but I could reconstruct the whole sequence and  
16 I'd be happy to.

17 Q We'll do that in one second but I do  
18 call for it's production.

19 MR. FREEMAN: Can you specify again  
20 the E-mail?

21 MS. STROM: I think you should ask  
22 your client. There's a whole exchange  
23 here that is not produced and he mentioned  
24 something about a restaurant critic so I  
25 would confer with your client. You can